# **BEFORE THE**

# RECEIVED

# Federal Communications Commission

APR 2 2 1996

WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

# DOCKET FILE COPY ORIGINAL

In Re Applications of WT Docket No. 96-41 LIBERTY CABLE CO., INC. File Nos. For Private Operational Fixed ) 708777 (WNTT370) Microwave Service Authorizations and ) 708778, 713296 (WNTM210) **Modifications** ) 708779 (WNTM385) ) 708780 (WNTT555) ) 708781, 709426, 711937 (WNTM212) New York, New York ) 709332 (NEW) ) 712203 (WNTW782) ) 712218 (WNTY584) ) 712219 (WNTY605) ) 713295 (WNTX889) ) 713300 (NEW) ) 717325 (NEW)

To: Administrative Law Judge Richard L. Sippel

# **MOTION TO ENLARGE ISSUES**

Time Warner Cable of New York City and Paragon Cable Manhattan ("TWCNYC"), by their counsel and pursuant to Section 1.229(b)(3) of the FCC rules, herein move to enlarge the issues designated for hearing in the above-captioned proceeding to determine whether Liberty Cable Co., Inc. ("Liberty") has illegally transferred control over its OFS facilities without prior FCC approval, failed to report those transfers, and lacked candor with respect to them. As set out herein, another company, Peter Kiewit Sons', Inc. ("Kiewit"),

Copies rec'd

has notified the Securities and Exchange Commission ("SEC") that it has purchased an 80 percent interest in Liberty's New York City private cable systems for \$42 million.

TWCNYC is not aware of any transfer application filed with the Commission by Liberty; nor has such a transfer ever been reported to the Commission, the Presiding Judge, or any party to this proceeding in connection with the above-captioned applications.<sup>1</sup>

# 1. Background.

On March 4, 1996, Liberty filed a "Notice of Name Change" at the Commission with regard to certain of the above-captioned OFS applications, reporting that Liberty

has changed its name to Bartholdi Cable Company, Inc., effective on the date written above. The change is in name only and does not reflect a change in ownership, control, or corporate structure.<sup>2</sup>

Liberty has recently repeated that representation. In two April 10, 1996 Requests For Special Temporary Authority with respect to File Nos. 713296 and 712218, executed by its President, Peter O. Price, Liberty reiterated that "[t]he change is in name only and does not reflect a change in ownership or control."<sup>3</sup>

¹TWCNYC received a copy of this SEC filing on April 9, 1996. Accordingly, this motion is timely filed, within 15 days after the discovery of the facts upon which it is based, in accordance with 47 C.F.R. § 1.229(b)(3). While TWCNYC was aware of certain newspaper stories before that date, which are set out herein, a newspaper account alone may not be the basis of allegations before the Commission. See, e.g., KRPL, Inc., 67 RR 2d 1172, 1174 (1990). TWCNYC subsequently was able to confirm that the reported sale was in fact consummated with the buyer's own 10-K report and thereafter filed this motion.

<sup>&</sup>lt;sup>2</sup>A copy of that Notice is attached hereto as Exhibit 1. For the sake of convenience, and in light of the caption to this proceeding, TWCNYC will continue to use the name Liberty herein.

<sup>&</sup>lt;sup>3</sup>Copies of those requests are attached hereto as Exhibit 2.

On April 1, 1996, the New York Daily News reported that RCN Corp. ("RCN"), a subsidiary of Kiewit, was "about to buy" Liberty. This article further reported that the CEO of RCN's telecommunications subsidiary, C-TEC Corp., was "a likely candidate to run Liberty as well as RCN's other ventures." On April 2, the New York Post reported that Liberty had sold an 80 percent stake to Kiewit, for an initial payment of \$60 million. The article further reported that Peter Price would "stay on to help lead the merged company."

Price and the Milstein family [Liberty's previous owners] aren't cashing out. "They're receiving stock and are in it for the long haul, in anticipation of a lucrative deal down the road" . . .

On April 7, 1996, the New York Times reported that Liberty had "sold 80 percent of itself" to a unit of Kiewit the week before and that Liberty had confirmed that "the selling price exceeded \$60 million."

On April 9, 1996, TWCNYC obtained a copy of Kiewit's most recent SEC Form 10-K, filed as of March 29, 1996. According to the 10-K, Kiewit pursues its telecommunications businesses through its subsidiary, Kiewit Diversified Group Inc. ("KDG"). Kiewit reported that:

In March 1996, RCN Corporation ("RCN"), a subsidiary of KDG, entered into an asset purchase agreement, along with other ancillary agreements, with Liberty Cable Company, Inc.

<sup>4&</sup>quot;60M deal will give them Liberty Cable," New York Daily News, April 1, 1996 at 23. See Exhibit 3 hereto.

<sup>&</sup>lt;sup>5</sup>"Liberty Cable Sells at Last," <u>New York Post</u>, April 2, 1996 at 28. <u>See</u> Exhibit 4 hereto.

<sup>&</sup>lt;sup>6</sup>"Neighborhood Report: Manhattan Up Close," New York Times, April 7, 1996 at 6. See Exhibit 5 hereto.

("Liberty") to purchase an 80 percent interest in certain private cable systems in New York City and selected areas of New Jersey. The transaction closed on March 6, 1996. The cable systems provide subscription television services using microwave frequencies. RCN deposited \$27 million in an escrow account which was released on the closing date. In addition, RCN issued a \$15 million promissory note that is expected to be paid during 1996 [emphasis added].<sup>7</sup>

The Commission may take official notice of the facts reported by Kiewit in its 10-K filing.

# 2. Illegal Transfer Of Control.

Kiewit's 10-K filing raises substantial and material questions as to whether Liberty has transferred control of some or all of its OFS facilities without prior FCC approval.

Section 94.47(a) of the FCC rules provides that

[a] station authorization, and the rights therein granted by such authorization, shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly disposed of by transfer of control of any corporation holding such authorization, to any person, unless the Commission shall, after securing full information, advise that said transfer is in the public interest. 47 C.F.R. § 94.47(a).

Pursuant to Section 94.47, Liberty could not transfer a controlling interest in either its own stock or in particular FCC-licensed facilities without prior FCC approval. Kiewit's 10-K makes clear that these facilities "provide subscription television services using microwave frequencies" (emphasis added). Thus, the facilities sold are subject to FCC licensing authority. An unauthorized transfer of control by a licensed facilities owner is a serious violation of the FCC rules and the Communications Act. See, e.g., Order, FCC 96-100, 1996 FCC Lexis 1242, released March 11, 1996 (order granting transfer of Silver King

<sup>&</sup>lt;sup>7</sup>SEC File No. 0-15658. <u>See</u> Exhibit 6 hereto.

Communications stayed due to allegations that transferor took control of another TV licensee without prior FCC approval). Issues of unlawful transfers and misrepresentation concerning them bear directly on character and basic qualifications. <u>Id.</u> at ¶ 3.

# 3. Additional Misrepresentations.

It is impossible to reconcile the information available from the Kiewit 10-K with Liberty's representations to the Commission. If Kiewit acquired 80 percent of Liberty's equity on March 6, the representations in Liberty's April 10 STA requests that there has been no change in ownership cannot be true. Moreover, in its April 15, 1996 Responses And Objections to Wireless Telecommunications Bureau's First Set of Interrogatories, Liberty identified its "owners, shareholders, partners, directors, officers and/or investors" since January 1, 1991 as only Howard Milstein, Edward Milstein and Phillip Milstein -- without mention of RCN or Kiewit.

Alternatively, if Kiewit has acquired 80 percent ownership of a significant number of Liberty's facilities — as reflected by the \$42 million purchase price — then other recent representations made by Liberty to the Commission cannot be true. For example, the April 10 STA requests represent that Liberty serves approximately 30,000 subscribers. This is the same number of subscribers Liberty served before the May 6, 1996 sale, as reported in the Hearing Designation Order in this proceeding, which was released on March 5, 1996. Thus, Liberty has represented that it continues to be the entity operating the OFS facilities and SMATV distribution systems serving these subscribers, while Kiewit claims to have acquired 80 percent ownership of Liberty's facilities.

<sup>&</sup>lt;sup>8</sup>See Exhibit 2 hereto.

# 4. Reporting Violations.

Although the Commission has granted Liberty interim operating authority pending the outcome of this proceeding, the above-captioned OFS applications remain pending. Section 1.65(a) of the FCC rules requires that whenever there has been a substantial change as to any matter which may be of decisional significance in an FCC proceeding involving a pending application, the applicant must furnish such information -- to the FCC and to the other parties -- as promptly as possible and in any event within 30 days. 47 C.F.R. § 1.65(a). More than 30 days have passed since Liberty entered into a purchase agreement with Kiewit's subsidiary and consummated that transfer. Given the fact that Liberty's abovecaptioned applications have been designated for hearing on character qualifications issues that may well implicate its shareholders (whether past or present), the fact that shareholders apparently have sold an 80 percent interest to a new party is certainly a substantial change of decisional significance. Moreover, the sale raises a substantial question whether these shareholders have been able to transfer control of their licensed facilities at a large profit, despite the pending hearing proceeding which has only just begun and the outstanding issues regarding their basic qualifications.

# 5. Issues Requested.

In light of the foregoing, TWCNYC respectfully requests that the following additional issues be designated for hearing in this proceeding:

(1) To determine whether Liberty has unlawfully transferred control of its licensed OFS facilities without prior FCC approval, in violation of 47 C.F.R. § 94.47 and 47 U.S.C. § 310(d).

- (2) To determine whether Liberty has misrepresented or concealed facts concerning a transfer of control of its OFS facilities and/or SMATV operations.
- (3) To determine whether Liberty has failed to amend its pending OFS applications or otherwise report a transfer of control in this proceeding, in violation of 47 C.F.R. § 1.65(a).
- (4) To determine, in light of the evidence adduced in Issues (1) through (3) above, whether the former and/or current owners of Liberty possess the requisite character qualifications to be granted the above-captioned OFS authorizations for which it has applied and, accordingly, whether grant of its applications would serve the public interest, convenience and necessity.
- (5) To determine, in light of the evidence adduced in Issues (1) through (3) above, what additional sanctions and remedies would be appropriate, including the revocation of other existing authorizations.

Respectfully submitted,

TIME WARNER CABLE OF NEW YORK CITY and PARAGON CABLE MANHATTAN

Arthur H. Harding
R. Bruce Beckner
Christopher G. Wood

Their Attorneys

Fleischman and Walsh, L.L.P. 1400 Sixteenth Street, N.W., Suite 600 Washington, D.C. 20036 202/939-7900

Dated: April 22, 1996

38432

March 4, 1996 Notice Of Name Change

200 MAR 1996

# PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

1776 K STREET, NORTHWEST, SUITE 200

WASHINGTON, D. C. 20006

(202) 296-0600

GREGG P. SKALL
E.THEODORE MALLYCK
OF COUNSEL

FREDERICK W. FORD

TELECOPIER (202) 296-5572
INTERNET PEPCORPCOMMLAW.COM

March 4, 1996

# VIA FACSIMILE & COURIER 717-337-0714

Federal Communications Commission 1270 Fairfield Road Gettysburg, PA 17325

Re:

Liberty Cable Co., Inc.

Notice of Name Change

# Dear Sir or Madam:

VINCENT A PEPPER

PETER GUTHANN

JOHN F. GARZIGLIA

NEAL J. FRIEDMAN

ELLEN S-MANDELL HOWARD J-BARR

L. CHARLES KELLER .

MICHAEL J. LENMKUHL &
SUZANNE C. SPINK &
RONALD G. LONDON &
NOT ADMITTED IN D.C.

ROBERT F. CORAZZINI

Submitted herewith, on behalf of Liberty Cable Co., Inc. is notice of name change pursuant to Section 94.45(b) of the Commission's Rules, effective immediately. As stated therein, the change is in name only and does not reflect a change in ownership, control or corporate structure. The signed original will follow under separate cover.

Questions concerning this matter should be directed to the undersigned.

Sincerely,

Michael J. Lehmkuh

Attorney for

Liberty Cable Co., Inc.

# **Enclosure**

1. 15

cc: Michele Farquhar, Chief, WTB (FCC) (By Hand)
Michael Hayden, Chief, Microwave Branch (FCC)
Joseph Weber, Enforcement Div., WTB (FCC) (By Hand)
Arthur H. Harding (Counsel for Time Warner) (By Mail)
Howard Symons (Counsel for Cablevision) (By Mail)

# LIBERTY CABLE CO., INC. 215 E. 95th Street New York, NY 10128

March 4, 1996

# **VIA FACSIMILE & COURIER**

Federal Communications Commission 1270 Fairfield Road Gettysburg, PA 17325

Re: Notice of Name Change

# Dear Sir or Madam:

Pursuant to Section 94.45(b) of the Commission's Rules, Liberty Cable Co., Inc., hereby notifies the Commission that it has changed its name to Bartholdi Cable Company, Inc., effective on the date written above. The change is in name only and does not reflect a change in ownership, control, or corporate structure.

The change affects the following authorizations and pending applications which are all fixed 18 GHz microwave facilities licensed in the Private Operational Fixed Service unless otherwise indicated:

# Licenses by FCC Call Sign

<b>WNTW782</b>	WNTM385	WPDT619*
WNTM212	WNTM210	
<b>WNTX889</b>	WNTP569	
WNTL307	WNTM555	

<sup>\*</sup> Fixed base with associated mobiles licensed in the Land Mobile Business Radio Service.

# Pending Applications by FCC File No.

712203*	708780*	722406
711937*	716187*	709332*
713295*	716188	717325*
713297*	718556	720702
708779*	712218*	718251
713296*	719788	713300*
708777*	712219*	. 20000

<sup>\*</sup> special temporary authority in effect

# Federal Communications Commission

Page 2 of 2

Please direct any questions concerning this matter to our counsel identified below.

Peter O. Price President

# Of Counsel:

Michael J. Lehmkuhl, Esq. Pepper & Corazzini, LLP 200 Montgomery Building 1776 K Street, NW Washington, D.C. 20006 202-296-0600 (voice) 202-296-5572 (fax)

April 10, 1996 Requests For Special Temporary Authority

# PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

1776 K STREET, NORTHWEST, SUITE 200

WASHINGTON, D. C. 20006

(202) 296-0600

GREGG P. SKALL
E.THEODORE MALLYCK
OF COUNSEL

FREDERICK W. FORD

1909-1986

TELECOPIER (202) 296-5572
INTERNET PEPCOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

April 10, 1996

# Via Courier

VINCENT A PEPPER

PETER GUTMANN

JOHN F. GARZIGLIA

NEAL J. FRIEDMAN

ELLEN S. MANDELL HOWARD J. BARR

MICHAEL J. LEHMKUHL .

SUZANNE C. SPINK .

RONALD G. LONDON B

ROBERT F. CORAZZINI

Federal Communications Commission Feeable Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305

Re: Batholdi Cable Company, Inc;

Request for Special Temporary Authority FCC File No. 712218; FCC Call Sign WMTY584;

30 Waterside: NYC, ("30 Waterside")

Dear Sir or Madam:

Transmitted herewith, on behalf of Bartholdi Cable Company, Inc. ("Bartholdi") is an original and one (1) copy of a request for special temporary authority ("STA") to operate the above-referenced facility for 180 days.

Enclosed is a check made payable to the Federal Communications Commission in the amount of \$45.00 to cover the necessary filing fees.

Questions with respect to this matter should be referred to the undersigned.

Sincerely,

Michael J. Lehmkuhl Attorney for Bartholdi

Cable Company, Inc.

## Enclosures

cc: Arthur H. Harding, Esq. (Counsel for Time Warner)

Michelle Farquhar Michael Hayden, Esq.

# Special Temporary Authority FCC File No. 712218, FCC Call Sign WNTY584 30 Waterside, New York City

Bartholdi Cable Company, Inc. ("Bartholdi") respectfully requests special temporary authority ("STA") pursuant to Section 94.43 of the Commission's rules to operate the following microwave path in the 18 GHz operational-fixed microwave service ("OFS") from a new transmitter facility at 30 Waterside, New York City to a receive site identified as 250 Mercer. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

Pursuant to Section 94.43(c) of the Commission's Rules, the following is submitted:

# 1. Name, Address and Citizenship of Applicant

Bartholdi Cable Co., Inc. 215 E. 95th Street New York, NY 10128 ATTN: Behrooz Nourain

Bartholdi is a New York Corporation

# 2. Need for Special Action

Bartholdi, formerly Liberty Cable Co., Inc. ("Liberty"), 1 is an alternative multichannel video programming distributor serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Bartholdi provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 MHz band ("the 18 GHz band").

On February 21, 1995, Liberty filed a new application to operate various paths from 30 Waterside. That application under FCC File No. 712218 remains pending due to petitions to deny filed by Time Warner. Since that time, however, Liberty sought and the Commission granted STA for many of the pending paths allowing Liberty to continue serving new customers and thereby promote continued competition in the Manhattan MVPD market. See, Liberty Cable Co. Requests for Special Temporary Authority,

<sup>&</sup>lt;sup>1</sup> On March 4, 1996, Liberty Cable Co., Inc. formally notified the Commission that it had changed its name to Bartholdi Cable Company, Inc. The change is in name only and does not reflect a change in ownership or control.

Letter from Michael Hayden, Chief, Microwave Branch, FCC to Howard J. Barr, Esq. et al., September 7, 1995. As a result of the Time Warner petitions, however, the Commission designated many of Liberty's pending applications for hearing, including this one. See, Hearing Designation Order and Notice of Opportunity for Hearing, WT Docket 96-41, FCC 96-85, released March 5, 1996 (hereinafter "HDO").

In the HDO the Commission granted Liberty interim operating authority under Section 4(i) of the Communications Act of 1934, as amended, to continue its operations of those paths that were subject to the order and that were currently operating under STA. Id. at para 21. The Commission conditioned its interim operating authority on the final resolution of the issues designated in the order. The Commission found that allowing Liberty to continue to operate would promote competition, therefore encouraging and fostering development of high quality, innovative services, at reasonable rates to the consumer. In addition, no competing applicants whose rights would be implicated by the grant would be affected and a temporary grant would not prejudice Time Warner's challenge to Liberty's applications. Id. at paras. 21 - 24.

On September 25, 1995, Liberty amended its application to include the path from 30 Waterside to 250 Mercer which was listed as accepted for filing on the Commission's Public Notice of October 6, 1995. This request for STA is being filed so that Bartholdi can honor its obligation to its customers at that address and to support the establishment of effective competition in the Manhattan video delivery market. Service to 250 Mercer was contracted for on January 12, 1996 and Bartholdi is obligated to provide service by the May 12, 1996 contract deadline. Bartholdi has no assurances that, in light of the HDO, its applications will be acted upon in time for regular service to commence in time.

The circumstances surrounding Bartholdi's request in this instance is identical to those requests that the Commission has previously granted STA and for which the Commission saw fit to grant Liberty interim operating authority for those STA requests granted up to the date of the HDO. Accordingly, Bartholdi respectfully requests that STA be granted for a period of 180 days and subject to the Commission's decision in WT Docket 96-41.

# 3. Type of Operation

Fixed transmission of video and audio signals in the 18 GHz band.

# 4. Purpose of Operation

The equipment will be used to distribute video entertainment programming, on frequencies in the 18,142 - 18,580 MHz band.

# 5. Time and Date of Operation Desired

Bartholdi requests continued authority for twenty-four (24) hour operation commencing as soon as possible for a period of 180 days, or until action is taken on its underlying application, whichever is sooner.

# 6-12. Technical Information

Bartholdi will operate the station in conformance with the technical specifications outlined in the referenced application(s) and incorporated in its previous requests for STA.

Bartholdi certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

Please address all correspondence regarding this matter to Bartholdi's counsel, Michael J. Lehmkuhl, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W.. Suite 200, Washington, DC 20006 as well as the undersigned.

1990

Peter O. Price President

Respectfull

Bartholdi Cable Company, Inc.

submitted.

Date:

# PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

1776 K STREET, NORTHWEST, SUITE 200

WASHINGTON, D. C. 20006

(202) 296-0600

GREGG P. SKALL E.THEODORE MALLYCK OF COUNSEL

> FREDERICK W. FORD 1900-1966

TELECOPIER (202) 296-5572 INTERNET PEPCOR@COMMLAW.COM WEB SITE HTTP://WWW.COMMLAW.COM

RONALD G. LONDON . B NOT ADMITTED IN D. C.

SUZANNE C. SPINK P

MICHAEL J. LEHMKUHL #

VINCENT A PEPPER

PETER GUTHANN

JOHN F. GARZIGLIA

NEAL J. FRIEDMAN

ELLEN S. MANDELL HOWARD J. BARR

ROBERT F CORATTINI

April 10, 1996

# Via Courier

Federal Communications Commission Feeable Correspondence P.O. Box 358305 Pittsburgh, PA 15251-5305

> Re: Bartholdi Cable Company, Inc; Request for Special Temporary Authority FCC File No. 713296; FCC Call Sign WMTM210; 20 West 64th Street, MYC ("One Lincoln Plaza")

Dear Sir or Madam:

Transmitted herewith, on behalf of Bartholdi Cable Company, Inc. ("Bartholdi") is an original and one (1) copy of a request for special temporary authority ("STA") to operate the abovereferenced facility for 180 days.

Enclosed is a check made payable to the Federal Communications Commission in the amount of \$45.00 to cover the necessary filing fees.

Questions with respect to this matter should be referred to the undersigned.

Singerely,

Michael J. Lehmkuhl Attorney for Bartholdi

Cable Company , Inc.

# Enclosures

cc: Arthur H. Harding, Esq. (Counsel for Time Warner) Michelle Farquhar Michael Hayden, Esq.

# Special Temporary Authority FCC File No. 713296, FCC Call Sign WNTM210 20 West 64th Street, NYC (One Lincoln Plaza)

Bartholdi Cable Company, Inc. ("Bartholdi") respectfully requests special temporary authority ("STA") pursuant to Section 94.43 of the Commission's rules to operate on a microwave path in the 18 GHz operational-fixed microwave service ("OFS") between Bartholdi's licensed transmitter facility at 20 West 64th Street, NYC (One Lincoln Plaza) and receive sites located at 225 West 86th Street, NYC and 315 Eighth Avenue. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

Pursuant to Section 94.43(c) of the Commission's rules, the following is submitted:

# 1. Name, Address and Citisenship of Applicant

Bartholdi Cable Company, Inc. 215 E. 95th Street New York, NY 10128 ATTN: Behrooz Nourain

Bartholdi is a New York Corporation

# 2. Need for Special Action

Bartholdi, formerly Liberty Cable Co., Inc. ("Liberty"), 1 is an alternative multichannel video programming distributor serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Bartholdi provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 band ("the 18 GHz band").

Since November 7, 1994, Liberty applied to add a number of new paths to its existing 18 GHz station, WNTM210, located at One Lincoln Plaza, FCC File No. 713296. The application remains pending due to petitions to deny filed by Time Warner. Since that time, however, Liberty sought and the Commission granted STA for many of the pending paths allowing Liberty to continue serving new customers and thereby promote continued competition in the Manhattan MVPD market. See, Liberty Cable Co. Requests for Special Temporary Authority, Letter from Michael Hayden, Chief, Microwave Branch, FCC to Howard J. Barr, Esq. et al.,

<sup>&</sup>lt;sup>1</sup> On March 4, 1996, Liberty Cable Co., Inc. formally notified the Commission that it had changed its name to Bartholdi Cable Company, Inc. The change is in name only and does not reflect a change in ownership or control.

September 7, 1995. As a result of the Time Warner petitions, however, the Commission designated many of Liberty's pending applications for hearing, including this one. <u>See</u>, <u>Hearing</u> <u>Designation Order and Notice of Opportunity for Hearing</u>, WT Docket 96-41, FCC 96-85, released March 5, 1996 (hereinafter "HDO").

In the HDO the Commission granted those of Liberty's pending applications not subject to the order and also granted interim operating authority for those paths subject to the order but that were operating under STA. Id. at para 21. Though the two paths in this request part of an application included under the HDO, no previous request for STA had been made and thus, the paths are not subject to any temporary authority except as might be granted herein. Bartholdi makes the instant request so that it may provide service to its customers in the same way it has been allowed to under the HDO and so that it can honor its obligation to its customers and to support the establishment of effective competition in the Manhattan video delivery market.

On January 11, 1996, Liberty amended its application to include a path from One Lincoln to 225 West 86th Street which has not yet been accepted for filing by the Commission. Service to 225 West 86th Street was contracted for on January 3, 1996 and Bartholdi is obligated to provide service by the May 3, 1996 contract deadline. Bartholdi has no assurances that, in light of the HDO, its applications will be acted upon in time for regular service to commence in time.

Similarly, one of the applications granted by the HDO was a new OFS transmitter at 315 Eighth Avenue, FCC Call Sign WPJB791, formally granted March 11, 1996. However, WPJB791 must receive its microwave signal from One Lincoln Plaza. This path was filed for on September 25, 1995 and accepted for filing on October 6, 1995 but has not yet been authorized either under STA or under the HDO. Bartholdi hereby respectfully requests STA for the path from One Lincoln to 315 Eighth Avenue so that it may operate WPJB791.

The Commission found in the HDO that allowing Liberty to continue to operate would promote competition, and therefore encouraging and fostering development of high quality, innovative services, at reasonable rates to the consumer. In addition, no competing applicants whose rights would be implicated by the grant would be affected and a temporary grant would not prejudice Time Warner's challenge to Liberty's applications. <u>Id</u>. at paras. 21 - 24.

The circumstances surrounding Bartholdi's STA request in this instance are identical to those requests that the Commission has previously granted STA and for which the Commission saw fit

to extend interim operating authority. Accordingly, Bartholdi respectfully requests that STA be granted for a period of 180 days and subject to the Commission's decision in WT Docket 96-41.

# 3. Type of Operation

Fixed transmission of video/audio in the 18 GHz band.

# 4. Purpose of Operation

The equipment will be used to distribute video entertainment programming, to private cable buildings on frequencies in the 18,142 - 18,580 MHz band.

# 5. Time and Date of Operation Desired

Bartholdi requests authority for twenty-four (24) hour operation pending action on the application for license and requests that such authority begin as soon as possible for a period of 180 days or until action is taken on Bartholdi's underlying application.

# 6-12. Technical Information

Bartholdi will operate the station in conformance with the technical specifications outlined in the referenced application(s).

Bartholdi certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

Please address all correspondence regarding this matter to Bartholdi's counsel, Michael J. Lehmkuhl, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W.. Suite 200, Washington, DC 20006 as well as the undersigned.

Respectfully submitted

Peter O. Price

President

Bartholdi Cable Company, Inc.

Date:

"60M Deal Will Give Them Liberty Cable," New York Daily News, April 1, 1996 at 23.

# Copyright 1996 Daily News, L.P. Daily News (New York)

April 01, 1996, Monday

SECTION: News; Pq. 23

LENGTH: 233 words

HEADLINE: 60M DEAL WILL GIVE THEM LIBERTY CABLE

BYLINE: BY PETER GRANT

# BODY:

An Omaha-based telecommunications company with deep-pocketed backers is reportedly about to buy Liberty Cable, the upstart company that has been challenging the dominance of Time Warner Cable in New York.

RCN Corp., whose backers include the construction giant Peter Kiewit and Sons., will pay less than \$ 60 million for the cable company owned by New York's Milstein family and run by former New York Post publisher Peter Price, well-informed sources told the Daily News last night.

Wall Street sources said the deal could be announced as early as today.

Cable TV experts believe that RCN will infuse both capital and expertise into Liberty, which broadcasts its signal to buildings equipped with special antennas.

Liberty has fewer than 50,000 subscribers, compared with Time Warner's more than 1 million.

"RCN will be able to bring Liberty to the next level," said one source.

The principals of RCN have achieved a strong track record in cable and telephone businesses. They have doubled the stock value of C-TEC Corp., a Princeton-based telecommunications company they bought in October 1993.

C-TEC's chief executive, David McCourt, is a likely candidate to run Liberty as well as RCN's other ventures, sources said.

RCN recently leased space on Sixth Ave. and also is reportedly planning to begin offering residential telephone service in the New York area.

"Liberty Cable Sells At Last,"
New York Post, April 2, 1996 at 28.

# ve ambitious pla

By GREGORY ZUCKERMAN

A majority stake in Liberty Cable, the upstart competitor to Time Warner Cable here, was yesterday bought by a relatively unknown Nebraska company.

The deal will mean Manhattan residents may soon be among the first in the country to gain access to a full service cable and telephone network — the deal's

phone network - the deal's backers claim.

Liberty agreed to sell an 80 percent stake to Peter Kiewit Bons' Inc. — a holding company with diverse interests - for an undis-

closed price.
Although company representatives would not reveal the exact value of the deal, sources close to the transaction said Liberty will receive an initial payment of \$60 million, with future

	Communication of the second se
	Names 1885 Marie 1
	He Williams
	Owner:
	Product Park Control of the Control
	Victoria de la constanta de la
	No. of the last state of the st
la	effeters (ptime to the contract of the contra
	The second secon

considerations that could bring the acquisition's total value to almost \$100 million.

Liberty is owned by the Milstein family, the well-

known real estate investors.
Miletein Properties owns
the brokerage firm Douglas
Elliman, Emigrant Savings
Bank, The Militord Plaza punk, The Milford Plaza and many well-known residential buildings such as the Normandie Court and Windsor Court.

Privately-held Kiewit has been called Omaha's quiet giant.

It is among the nation's largest builders, and has in-terests in mining and food packaging, but has long been overshadowed by Warren Buffett's investment

empire. Kiewit's hard-charging Chairman, Walter Scott Jr., is set on putting the emplovee-owned company on

the national map, however.
Last week, Klewit announced the purchase of C-Teo Corp.'s residential communication business. By combining the unit with Liberty, Kiewit hopes to carve a niche in the New York market, and expand

throughout the country.
The idea is to provide a full-service network as an full-service network as an alternative to the telephone and cable giants," said Liberty co-CEO Peter Price, who will stay on to help lead the merged company.

"Kiewit saw us as having put on the ground what they want to do ground the

country, and we'll be the keystone to that strategy," Price added. "The deal gives us credibility."

Kiewit subsidiary RCN Corp. a fast-growing telephone service provider, will now give Liberty subscribers an alternative to exist-

ing phone companies.
With the deal, Liberty's
New York customers can expect video, local and long-distance telephone and data service, Internet access and more in the next year.

In fact, some New York residents will be granted full-service network access in the next two weeks, according to Price.
But the highly touted full See CASLE on Page 31



DONE DEALS How The Post reported on suitors taking a look at Liberty Cable.

Fun Page M access has failed to

mers. Riome of experiment in as struggled to ear interested in services such as in-

re shapping. ar efferts by Bell At-and U.S. West have

alse floundered.

The Liberty-Riewit approach will be to build a less complex network aimed at providing better aervices at Jower prices than competing cable, telephone and

Internet-access companies.
"It's hard to get people used to a new service, and change over to a new cable and phone provider," said Jay Dugan of Communications Equity Associates, "But it's a good concept in the long run, and the real winner in all of this is the consumer."

There will be other winners as well according to

ners as well according to well-connected sources. Rie-wit will likely spin off its content business to the public-down the road, much like it did with its telecommuni-

cations subsidiary, MFS Communications Co. last

They're using to package grammating and telecom-minations services and a cff the content busine like they did with B, a distribution com-ny' said a source close to MP

and the Milstein area't cashing out.
The receiving stock and it for the long have the long have the roll. the source said.